

8 Official Opinions of the Compliance Board 118 (2012)

- ◆ **Public body** - *determined not to be a public body:*
 - ◇ Neighborhood association controlled by lot owners

*Topic headings correspond to those in the Opinions Index (2010 edition) at <http://www.oag.state.md.us/opengov/openmeetings/appf.pdf>

September 26, 2012

**Pines Community Improvement Association, Inc.
(Ann Meade Daniel)**

We have considered the complaint of Ann Meade Daniel (“Complainant”) that the Pines Community Improvement Association, Inc. (the “Association”) is subject to the Open Meetings Act (the “Act”) by virtue of its administration of the Pines Special Community Benefit District (“benefit district”) and violated the Act and the Public Information Act (“PIA”) in various ways. As explained below, we conclude that the Association is not subject to the Act.

In response to our request for its organizational documents, the Association submitted its 1926 certificate of incorporation, a 1975 filing confirming its status as a Maryland Corporation, its constitution, and its bylaws. These documents show that the Association was created as, and remains, a Maryland Corporation with a voting membership consisting of owners of properties in the community known as “The Pines on the Severn.” Its Board of Governors is elected by the members. In 2007, the Anne Arundel County Council enacted legislation that created a “Pines on the Severn Special Community Benefit District” and designated the Association as the “civic or community association” responsible for administering it. County Code §§ 4-7-204 (ww) and 4-7-101(d).

The Act applies to “public bodies.” State Government Article (“SG”) § 10-501. SG § 10-502 (h) defines the term “public body” to include entities created in any of three ways, none of which applies here. See 7 *OMCB Opinions* 195, 198-202 (2011), available at <http://www.oag.state.md.us/Opinions/Open2010/7omcb195.pdf> (explaining the meaning of “public body”). Additionally, the Maryland courts have construed the Act to apply to apparently-private entities that function as instrumentalities of a governmental body. *Id.* Complainant asserts that the Association conducts the business of, and thereby functions as an instrumentality of, Anne Arundel County. As we explained in 7 *OMCB Opinions* 195, a key factor in evaluating the function of a privately-formed entity is the extent to which a government entity “has control over [the

entity's] fundamental corporate governance," including matters such as the power to amend the bylaws, select the board, or dissolve the entity. *Id.* at 200-201.

Here, the documents submitted by the Association establish that its members and the board members they elect have control over the governance of the Association; the County does not. Particularly, the County has no role in the selection of the board and no vote on changes to the Association's constitution and bylaws. The documents further establish that the existence of the Association itself is not contingent either on County approval or the continuation of the benefit district. While some special taxing districts are managed by statutorily-created boards controlled by a local government, as in *Floyd v. Mayor of Baltimore*, 407 Md. 461 (2009) (involving the Charles Village Community Benefits District Management Authority Board), this district is not. The facts that the Association administers the benefit district funds and, according to its bylaws, must follow the County's "rules, regulations and guidelines . . . pertaining to [benefit district] financial management processes" do not mean that it functions as a County instrumentality for purposes of the Act. *See* 1 *OMCB Opinions* 212, 216, n.4 (1997) (stating that government funding of an entity is not material to its status under the Act); *see also Williams v. Anne Arundel County*, 334 Md. 109, 125 (1994) (describing an Anne Arundel County special community benefit district as "simply an assessment area").

We conclude that the Association is not a public body under the Act and therefore did not violate it. Our authority does not extend to Public Information Act matters. *See* SG § 10-502.4(a).

Open Meetings Compliance Board

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